

JOSEPH F. SMITH §
VS. § CIVIL ACTION NO. 1:06cv597
UNITED STATES OF AMERICA §

Movant Joseph F. Smith, a federal prisoner, proceeding *pro se*, brought this motion to vacate, set aside or correct sentence pursuant to 28 U.S.C. § 2255.

The court referred this matter to the Honorable Earl S. Hines, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The magistrate judge recommends that the respondent's motion to dismiss as barred by limitations be denied.

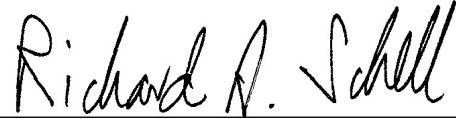
The court has received and considered the Report and Recommendation of United States Magistrate Judge filed pursuant to such referral, along with the record, pleadings and all available evidence. No objections to the Report and Recommendation of United States Magistrate Judge were filed by the parties.

Accordingly, the findings of fact and conclusions of law of the magistrate judge are correct and the report of the magistrate judge is **ADOPTED**. It is therefore

ORDERED that the respondent shall, within thirty (30) days from the date of this order, file a response on the merits showing

cause why relief should not be granted. The response shall address movant's original motion to vacate, set aside or correct sentence, as well his amended complaint to the extent it was granted.

SIGNED this the 7th day of January, 2010.

A handwritten signature in black ink, reading "Richard A. Schell". The signature is written in a cursive style with a horizontal line underneath the name.

RICHARD A. SCHELL
UNITED STATES DISTRICT JUDGE